

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Griffin Sherbert	Team: Squad #7	CCRB Case #: 201907186	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input checked="" type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Tuesday 08/13/2019 1:00 PM	18 Mo. SOL 02-13-2021	EO SOL 09-30-2021	Location of Incident: within the 90th Precinct Stationhouse		Precinct: 90
Date/Time CV Reported Tue, 08/13/2019 2:30 PM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Tue, 08/13/2019 2:30 PM		

Complainant/Victim	Type	Home Address
1. § 87(2)(b)	Comp/Victim	§ 87(2)(b)
2. § 87(2)(b)	Victim	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. SGT Kitwane Lewis	04105	951915	090 PCT
2. DT3 Michael Caccavale	3672	948728	090 DET
3. POM Kenneth Melendez	16006	949319	090 PCT
4. POM Robert Alimena	16308	954477	PA UPTU
5. An officer			090 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Tejinder Singh	14167	959992	090 PCT

Officer(s)	Allegation	Investigator Recommendation
A . DT3 Michael Caccavale	Force: Within the 90th Precinct stationhouse, Detective Michael Caccavale used physical force against § 87(2)(b).	A . § 87(2)(g)
B . DT3 Michael Caccavale	Discourtesy: Within the 90th Precinct stationhouse, Detective Michael Caccavale spoke discourteously to § 87(2)(b).	B . § 87(2)(g)
C . DT3 Michael Caccavale	Force: In front of the 90th Precinct stationhouse, Detective Michael Caccavale used physical force against § 87(2)(b).	C . § 87(2)(g)
D . POM Kenneth Melendez	Discourtesy: In front of the 90th Precinct stationhouse, Police Officer Kenneth Melendez spoke discourteously to § 87(2)(b).	D . § 87(2)(g)
E . An officer	Abuse of Authority: In front of the 90th Precinct stationhouse, an officer threatened to arrest § 87(2)(b).	E . § 87(2)(g)
F . DT3 Michael Caccavale	Abuse of Authority: Within the 90th Precinct stationhouse, Detective Michael Caccavale threatened § 87(2)(b) with the use of force.	F . § 87(2)(g)
G . DT3 Michael Caccavale	Discourtesy: Within the 90th Precinct stationhouse, Detective Michael Caccavale spoke discourteously to § 87(2)(b).	G . § 87(2)(g)
H . DT3 Michael Caccavale	Offensive Language: Within the 90th Precinct stationhouse, Detective Michael Caccavale made remarks to § 87(2)(b) based upon the gender of § 87(2)(b).	H . § 87(2)(g)

Officer(s)	Allegation	Investigator Recommendation
I. § 87(4-b), § 87(2)(g)		
J. § 87(4-b), § 87(2)(g)		

Case Summary

On August 13, 2019, § 87(2)(b) called the CCRB and filed the following complaint on behalf of herself, and her boyfriend, § 87(2)(b).

On August 13, 2019, at approximately 1:00 p.m., § 87(2)(b) and § 87(2)(b) were at the 90th Precinct stationhouse at 211 Union Avenue in Brooklyn, to file criminal complaint reports, wherein § 87(2)(b) and Sergeant Kitwane Lewis of the 90th Precinct, engaged in verbal altercation. As the altercation escalated, Detective Michael Caccavale of the 90th Precinct Detective Squad, approached § 87(2)(b), grabbed and escorted him from the stationhouse, and told him to “get the fuck outta here” (**Allegation A: Force-Physical Force**, § 87(2)(g); **Allegation B: Discourtesy-Word**, § 87(2)(g)). § 87(2)(b) and § 87(2)(b) remained outside the stationhouse, until Det. Caccavale, Sgt. Lewis, and Police Officer Kenneth Melendez of the 90th Precinct, exited and approached. Det. Caccavale pushed § 87(2)(b) from behind a few times (**Allegation C: Force-Physical Force**, § 87(2)(g)), before PO Melendez and Sgt. Lewis handcuffed him. While handcuffing him, PO Melendez told § 87(2)(b) that he is “not a fucking tough guy” (**Allegation D: Discourtesy-Word**, § 87(2)(g)), and an officer told § 87(2)(b) to back up or she would be “the next one going” (**Allegation E: Abuse of Authority-Threat of Arrest**, § 87(2)(g)).

In front of the desk within the 90th Precinct stationhouse, Det. Caccavale told § 87(2)(b) “you’re not trying to get your dick sucked now, right? Lucky you didn’t get the shit knocked outta you. You’re a bitch. A fucking bitch” (**Allegation F: Abuse of Authority-Threat of Physical Force**, § 87(2)(g); **Allegation G: Discourtesy-Word**, § 87(2)(g); **Allegation H: Offensive Language-Gender**, § 87(2)(g)). § 87(2)(b) was charged with criminal trespassing.

The investigation obtained two cell phone videos from § 87(2)(b) (BR01-BR02), four Body-Worn Camera (“BWC”) videos from the involved officers (BR03-BR06), and five CCTV videos from within the 90th Precinct stationhouse (BR07-BR11), which captured portions of this incident.

§ 87(2)(g)

Allegation A—Force: Within the 90th Precinct Stationhouse, Detective Michael Caccavale used physical force against § 87(2)(b)

Allegation B—Discourtesy: In front of the 90th Precinct Stationhouse, Detective Michael Caccavale spoke discourteously to § 87(2)(b)

Allegation C—Force: In front of the 90th Precinct Stationhouse, Detective Michael Caccavale used physical force against § 87(2)(b)

Allegation D—Discourtesy: In front of the 90th Precinct Stationhouse, Police Officer Kenneth Melendez spoke discourteously to § 87(2)(b)

Allegation E—Abuse of Authority: In front of the 90th Precinct Stationhouse, an officer threatened to arrest § 87(2)(b)

On August 13, 2019, at approximately 1:00 p.m., § 87(2)(b) and § 87(2)(b) entered the 90th Precinct stationhouse in order to file complaint reports against § 87(2)(b) ex-girlfriend. § 87(2)(b) (BR12) and § 87(2)(b) (BR13) testified that after filling out their reports and handing them to the female officer at the desk behind the window, § 87(2)(b) and Sgt Lewis engaged in a tense verbal altercation. Stationhouse footage from the 90th Precinct (BR07) confirmed that § 87(2)(b) and § 87(2)(b) were speaking with a female officer at the front desk, filling out forms, and an elderly male and female are seen seated nearby.

§ 87(2)(b) alleged that after he handed the paperwork to the female officer, Sgt. Lewis approached and laughed at him. § 87(2)(b) acknowledged telling Sgt. Lewis to leave him the fuck alone. Sgt. Lewis (BR14) testified that § 87(2)(b) was giving the female officer a hard time and asked to write “suck my dick” on the complaint report. Det. Caccavale (BR16), who was in the area at that time, heard § 87(2)(b) repeatedly shout “suck my dick” at Sgt Lewis and the

female officer. PO Melendez (BR15) exited the Community Affairs office, and saw § 87(2)(b) repeatedly shouting “suck my dick,” at Det. Caccavale, and threatening to “kill you cops,” while an elderly male and female were present in the lobby.

The stationhouse footage (BR07) shows that as § 87(2)(b) returned the forms to the female officer, Sgt. Lewis and § 87(2)(b) begin speaking to each other for several moments. At the 25:05 minute mark, Det. Caccavale, seen in a blue button-up shirt and black slacks, exits the Community Affairs office and walks to the door to the bottom right of frame, glancing briefly at § 87(2)(b) speaking to Sgt. Lewis. A few seconds later, § 87(2)(b) holds up his middle finger to Sgt. Lewis, who crumples up a piece of paper. Det. Caccavale walks over and appears to speak to § 87(2)(b) makes a finger-wagging gesture at him, and points toward Sgt. Lewis.

Sgt. Lewis said (BR14) after § 87(2)(b) became loud and boisterous, he told him to leave the stationhouse. Sgt. Lewis noted that there were other civilians present who appeared scared by § 87(2)(b) behavior, and that § 87(2)(b) refused to leave and tensed his body. § 87(2)(b) acknowledged (BR12) that after being told to leave, he told Sgt. Lewis to “suck his dick” several times. § 87(2)(b) alleged that Det. Caccavale approached and told him to “get the fuck outta here,” which Det. Caccavale (BR16) acknowledged. § 87(2)(b) told Det. Caccavale to “shut the fuck up” and told Sgt. Lewis to “suck [his] dick” again. § 87(2)(b) said (BR13) that she and § 87(2)(b) had been asked to leave the stationhouse approximately three times at that point, and that several additional officers had come to the lobby.

After § 87(2)(b) refused to leave, Det. Caccavale (BR16) grabbed § 87(2)(b) by his bicep and hip, escorted him from the lobby, and told him again to leave. This was confirmed by the stationhouse footage (BR07), where at the 25:25 minute mark in the stationhouse footage (BR07), Sgt. Lewis enters the lobby followed by a few additional officers, as Det. Caccavale grabs § 87(2)(b) by his arm and hip, escorts him to the door, and pushes him lightly with one hand on his back out of the stationhouse entrance. Sgt. Lewis guides § 87(2)(b) out of the stationhouse after § 87(2)(b) and makes a waving gesture to them outside.

§ 87(2)(b) stated (BR12) that after Det. Caccavale and Sgt. Lewis escorted him and § 87(2)(b) out of the stationhouse, he continued to yell at the officers from the bottom of the entrance steps in front of the stationhouse. A minute or two later, Det. Caccavale, Sgt. Lewis, and several additional officers exited the stationhouse and approached § 87(2)(b).

At the 26:10 minute mark in the stationhouse footage (BR07), Det. Caccavale and PO Melendez stand over the threshold of the entrance door, as Sgt. Lewis and additional officers reenter the lobby. At the 26:30 minute mark, Sgt. Lewis, followed by Det. Caccavale, PO Melendez, and several other uniformed and plainclothes officers exit the stationhouse entrance door, and return at the 27: 25 minute mark, with § 87(2)(b) in handcuffs.

§ 87(2)(b) recorded two short videos in succession on her cell phone (BR01 & BR02). The first video (BR01) begins after she and § 87(2)(b) had been escorted out, and shows the front of the main entrance of the 90th Precinct stationhouse. Det. Caccavale is seen standing over the threshold, and § 87(2)(b) left arm and gray shirt sleeve are partially visible. § 87(2)(b) is heard saying, “suck my dick,” drawing Sgt. Lewis to the door, who makes a sweeping gesture with his hand, says “no report,” and repeatedly tells § 87(2)(b) to “have a good day.” § 87(2)(b) tells Sgt. Lewis to “shut the fuck up. Nobody’s talking to you, I’m talking to him,” referring to Det. Caccavale. § 87(2)(b) tells Sgt. Lewis to “mind your fucking business,” and repeatedly tells him to “suck [his] dick,” until the 14-second mark, wherein Sgt. Lewis and the other officers exit the stationhouse as the video abruptly ends.

The second cell phone video (BR02) begins almost immediately after the first video concludes, and shows the back of Det. Caccavale following § 87(2)(b) away from the stationhouse. § 87(2)(b) tells the officers they “don’t have to touch” § 87(2)(b) as Det. Caccavale pushes § 87(2)(b) from behind, causing him to stumble slightly while walking toward the street, and PO Melendez is seen following behind. § 87(2)(b) walks into the street, closely pursued by Det. Caccavale. The camera briefly pans downward as § 87(2)(b) says they are

no longer on the property, and as the camera pans back up, Det. Caccavale is seen backing up toward the stationhouse, and says, “fuck out of here.” Off camera, § 87(2)(b) and PO Melendez are heard arguing over whether he is “a tough guy,” and the camera pans right and shows Sgt. Lewis grabbing § 87(2)(b) from the street. PO Melendez and Sgt. Lewis place § 87(2)(b) chest-first against an unmarked RMP by the curb. As the camera turns to the right, PO Melendez shouts at § 87(2)(b) “you’re a fucking tough guy?” PO Melendez and an unidentified uniformed officer hold § 87(2)(b) arms behind his back, and press him against the hood of the RMP, as Sgt. Lewis handcuffs him.

At the 21-second mark, an unidentified uniformed officer’s back blocks the camera briefly, § 87(2)(b) abruptly says she is “not touching,” and an unidentified officer replies, “relax, back up.” As Sgt. Lewis and PO Melendez continue to hold his arms and press him against the RMP, PO Melendez tells § 87(2)(b) to not resist, he denies he is, and § 87(2)(b) moving closer says, § 87(2)(b) is not resisting.” At the 30-second mark, § 87(2)(b) suddenly jerks and says, “Don’t touch me!” several times to an unidentified officer off-camera, who tells her that she is “the next one going.” The group of officers escort § 87(2)(b) inside, followed by § 87(2)(b) and the video concludes as she reaches the front steps of the 90th Precinct stationhouse.

Sgt. Lewis (BR14) stated that § 87(2)(b) was deemed to be under arrest the moment he and the other officers approached him after he had repeatedly refused to leave the stationhouse and entranceway. Det. Caccavale (BR16) testified that when § 87(2)(b) refused to leave, remained standing in the front entranceway of the stationhouse, and continued to shout, “suck my dick,” he and other officers had to go outside and “deal with § 87(2)(b) as they did not know how much longer his behavior was going to go on for. Det. Caccavale shoved § 87(2)(b) a few times in order to get him to physically leave the area on his own, given § 87(2)(b) had already verbally and physically refused to comply with his and the other officers’ orders.

PO Melendez acknowledged (BR15), as heard in § 87(2)(b)’s cell phone video (BR02), that he told § 87(2)(b) “You’re not a fucking tough guy,” but did not recall or offer explanation as to why he said that. § 87(2)(b) affirmed (BR13), that when the unidentified officer told her that she is “the next one going,” she took the officer’s remark to mean he would arrest her. PO Melendez (BR15), however, did not recall himself or any other officer threatening to arrest, or having any interaction with § 87(2)(b) during the incident.

After he was handcuffed, Sgt. Lewis and the other officers escorted § 87(2)(b) into the stationhouse, and lodged him in a holding cell. § 87(2)(b) was charged with disorderly conduct, obstructing governmental administration, and criminal trespassing. The narrative of Arrest Report #§ 87(2)(b) (BR17), noted that § 87(2)(b) entered the 90th Precinct stationhouse, began to act disorderly and yell profanities, and officers escorted him out. § 87(2)(b) refused to leave the entrance of the stationhouse and continued to yell profanities, caused public alarm, and was arrested for § 87(2)(b).

In People v. Reape, the court found that an officer who had arrested an individual for criminal trespassing within an NYPD stationhouse was justified as the individual had been asked to leave and they refused, and allowing the individual to remain would have interfered with the ordinary use of the property by members of the police department and other members of the public. People v. Reape, 22 Misc. 3d 615 (Crim Ct. 2008) (BR18).

When an officer uses an otherwise impolite word during a stressful encounter, where that officer is attempting to maintain control of the situation, the officer’s verbal slip does not rise to the level of actionable misconduct. DCT Case No. 79627/04 (BR19).

An officer may use force when it is reasonable to ensure the safety of a member of the service or a third person, or otherwise protect life, or when it is reasonable to place a person in custody or to prevent escape from custody. In all circumstances, any application or use of force must be reasonable under the circumstances. [...] In determining whether the use of force is reasonable, members of the service should consider the following: nature and severity of the crime or circumstances, actions taken by the subject, duration of the action, immediacy of the perceived

threat or harm to the subject, members of the service, or bystanders, whether the subject is actively resisting custody, whether the subject is attempting to evade arrest by flight, number of subjects in comparison to the number of MOS, size, age, and condition of the subject in comparison to the MOS, the subject's violent history (if known), and the presence of hostile crowd or agitators. [...] Members of the service shall not: use any level of force to punish, retaliate or coerce a subject to make statements. Patrol Guide, Procedure 221-01 (BR20).

The mission of the New York City Police Department is to enhance the quality of life in New York City by working in partnership with the community to enforce the law, preserve peace, protect the people, reduce fear, and maintain order. [...] In partnership with the community, we pledge to: Protect the lives and property of our fellow citizens and impartially enforce the law. Fight crime, both by preventing it and aggressively pursuing violators of the law. Maintain a higher standard of integrity than is generally expected of others because so much is expected of us. Value human life, respect the dignity of each individual and render our services with courtesy and civility. Patrol Guide, Procedure 200-02 (BR21).

§ 87(2)(g)

§ 87(2)(g)

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§ 87(2)(g)

Allegation F—Abuse of Authority: Within the 90th Precinct Stationhouse, Detective Michael Caccavale threatened § 87(2)(b) with the use of force.

Allegation G—Discourtesy: Within the 90th Precinct Stationhouse, Detective Michael Caccavale spoke discourteously to § 87(2)(b)

Allegation H—Offensive Language: Within the 90th Precinct Stationhouse, Detective Michael Caccavale made remarks to § 87(2)(b) based upon the gender of § 87(2)(b)

The investigation obtained four BWC videos (BR03-BR06) from the involved officers that captured portions of the incident, of which Sgt. Alimena's (BR03) and Sgt. Lewis' (BR04) footage is the most relevant. As both of their BWC videos captures the same occurrence, only Sgt. Alimena's footage is described below.

At the 1:18 minute mark of Sgt. Alimena's BWC video (BR03), after § 87(2)(b) has been arrested and escorted in front of the desk within the 90th Precinct stationhouse, Sgt. Alimena's BWC captures Det. Caccavale, standing to the right of § 87(2)(b). Det. Caccavale is heard asking § 87(2)(b) "you're not trying to get your dick sucked now, right? Lucky you didn't get the shit knocked outta you. You're a bitch. A fucking bitch." After Det. Caccavale makes the aforementioned remark, both Sgt. Alimena and Sgt. Lewis abruptly turn off their BWCs (BR03 & BR04).

Det. Caccavale (BR16) acknowledged that he and § 87(2)(b) had a contentious interaction at the desk, because he "was upset § 87(2)(b) had the opportunity to leave, and he didn't take it." After viewing the above referenced BWC clip, Det. Caccavale acknowledged stating, "you're not trying to get your dick sucked now, right? Lucky you didn't get the shit knocked outta you. You're a bitch. A fucking bitch," to § 87(2)(b) as captured in the footage (BR03). Det. Caccavale stated that used the aforementioned phrases out of frustration, as he had tried to go "above and beyond" for § 87(2)(b) but he repeatedly refused to leave on his own volition.

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§ 87(2)(g)

§ 87(4-b), § 87(2)(g)

Civilian and Officer CCRB Histories

- This is the first CCRB complaint in which § 87(2)(b) has been a party.
 - § 87(2)(b)
- This is the third CCRB complaint in which § 87(2)(b) has been a party.
 - § 87(2)(b)
- Sgt. Lewis, an eight-year-member-of-service, has had (11) prior CCRB complaints filed against him, with a total of 29 allegations, (1) of which has been substantiated (see Officer History).
 - In CCRB #201901804, failure to provide RTKA card allegation was substantiated against Sgt. Lewis, the CCRB recommended Command Discipline A, which is pending NYPD review and disposition.
- Sgt. Alimena, a six-year-member-of-service, has had two prior CCRB complaints filed against him, with a total of nine allegations, three of which substantiated (see Officer History). § 87(2)(g)
 - In CCRB #201801705, frisk, search of a person, and discourtesy allegations substantiated against Sgt. Alimena, the CCRB recommended Command Discipline B for each, the NYPD raised the disposition to Command Discipline A, and he was penalized accordingly.
- Det. Caccavale, a nine-year-member-of-service, has had six prior CCRB complaints filed against him, with a total of (14) allegations, none of which were substantiated (see Officer History). § 87(2)(g)
- PO Melendez, a nine-year-member-of-service, has had one prior CCRB complaint filed against him, with a total of one allegation, which was not substantiated (see Officer History). § 87(2)(g)

- This case was not suitable for mediation.
- On May 5, 2020, a FOIL request was sent to the NYC Comptroller’s Office to determine whether § 87(2)(b) or § 87(2)(b) has filed a Notice of Claim in regard to this incident, the results of which will be added to the case file upon receipt (BR24).
- § 87(2)(b) § 87(2)(c)
[REDACTED]

Investigator:	<u>Griffin Sherbert</u>	<u>Inv. Griffin Sherbert</u>	<u>06/01/2020</u>
	Signature	Print Title & Name	Date
Squad Leader:	<u> </u>	Manager Vanessa Rosen	June 2, 2020
	Signature	Print Title & Name	Date
Reviewer:	<u> </u>	<u> </u>	<u> </u>
	Signature	Print Title & Name	Date